

LARRY ENGLISH

Appellant

v.

HARFORD COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR07-02

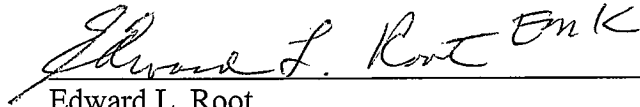
ORDER

Appellants filed this appeal from the local board's decision to adjust attendance boundaries for various public middle and high schools in Harford County, effective August 2007. The overall purpose of the redistricting was to relieve overcrowding in several schools and to populate a new school, Patterson Mill Middle/High School, which is slated to open for the 2007-2008 school year. As part of the redistricting, the local board also determined which grades would attend the new school and whether and to what extent students affected by the redistricting would be "grandfathered" so that they could remain at their existing schools. This Board referred the case to the Office of Administrative Hearings where the Administrative Law Judge (ALJ) conducted a hearing on the local board's Motion for Summary Affirmance on July 28, 2006.

On August 24, 2006, the ALJ issued a 20 page Proposed Decision recommending that the State Board grant the local board's Motion for Summary Affirmance and affirm the local board's boundary decisions. All parties were given notice that any exceptions to the ALJ's decision were to be filed within 15 days of receipt of the decision. No exceptions were filed.

We have reviewed the ALJ's decision. It is comprehensive, well-reasoned, and his recommendation to affirm the local board is supported by the facts and the law. Accordingly, we adopt the Administrative Law Judge's Proposed Decision as the opinion of this Board.

For all of the reasons stated, it is so ORDERED this 2 day of February, 2007, by unanimous vote of the Maryland State Board of Education.



Edward L. Root
President

Charlene Necessary

From: Arlene Block [ABlock@oah.state.md.us]
Sent: Tuesday, December 19, 2006 2:04 PM
To: TSANTIAGO@OAG.STATE.MD.US
Subject: #83240 v1 - MSDE-BE-09-06-26214 (ENGLISH) - ROM - GRANTING MOTION FOR SUMMARY DECISION - issued 8-24-06

LARRY T. ENGLISH, et. al. * BEFORE BRIAN ZLOTNICK,
APPELLANT * AN ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE
HARFORD COUNTY * OF ADMINISTRATIVE HEARINGS
BOARD OF EDUCATION * CASE NO.: MSDE-BE-09-06-26214

* * * * *

**PROPOSED ORDER ON THE BOARD OF EDUCATION'S
MOTION FOR SUMMARY AFFIRMANCE**

STATEMENT OF THE CASE
ISSUE
MATERIAL FACTS NOT IN DISPUTE
DISCUSSION
CONCLUSIONS OF LAW
NOTICE OF RIGHT TO FILE EXCEPTIONS
PROPOSED ORDER

STATEMENT OF THE CASE

On April 3, 2006, the Harford County Board of Education ("Board" or "BOE") voted to approve various actions which changed attendance areas for various public middle and high schools in Harford County effective August 2007. The Board also determined which class grades would attend the new middle/high school scheduled to be opened in August 2007 and whether and to what extent students would be "grandfathered" with respect to particular schools whose attendance areas were changed.

On May 2, 2006, Larry T. English, Sandra D. Krause and Richard P. Pfungsten, representing the Forest Lakes Community ("Appellant"), filed an appeal with the Maryland State Department of Education ("MSDE"). On May 19, 2006, the Board filed a request with MSDE for an extension of time to respond to the appeal and that request was granted by MSDE on May 19, 2006.

On May 24, 2006, the Board, through counsel, filed an Answer to the appeal and a Motion for Summary Affirmance in accordance with Code of Maryland Regulations ("COMAR") 13A.01.05.03D. [1]

On June 6, 2006, the MSDE transmitted the appeal to the Office of Administrative Hearings ("OAH") to conduct a contested-case hearing. On June 27, 2006, I directed the Appellant to respond to the BOE's motion by July 20, 2006. I also directed both parties to be prepared to argue the motion at the Preliminary Hearing Conference ("PHC") scheduled for July 28, 2006. On July 19, 2006, the Appellant submitted a written response to the Board's motion.

On July 28, 2006, I conducted a PHC and Motions Hearing. COMAR 28.02.01.13 and 28.02.01.16. The Appellant represented himself. Patrick P. Spicer, Esquire, General Counsel, represented the BOE. Both parties presented argument concerning the BOE's Motion for Summary Affirmance. The contested-case hearing is scheduled to convene on September 13, 14, 20 and 21, 2006.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005); Regulations for Appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01, govern procedure.

ISSUE

The issue is whether the BOE's Motion for Summary Affirmance should be granted because the Appellant failed to raise any genuine dispute concerning any material fact, and the BOE is entitled to prevail as a matter of law.

SUMMARY OF THE EVIDENCE

Exhibits

The following 25 exhibits that the BOE submitted with its Motion for Summary Affirmance and presented at the Motions hearing were considered:

1. Relevant minutes from the March 25, 2002 Board meeting
2. Minutes of the November 28, 2005 Board meeting
3. Minutes of December 21, 2005 Superintendent's Technical Advisory Committee ("STAC") presentation meeting
4. Minutes of January 4, 2006 STAC presentation meeting
5. Minutes of January 11, 2006 STAC presentation meeting
6. Minutes of February 21, 2006 Board meeting and work session
7. Minutes of March 1, 2006 Board meeting
8. Minutes of March 2, 2006 Board meeting
9. Minutes of March 6, 2006 Board meeting
10. Minutes of March 20, 2006 Board meeting
11. Minutes of April 3, 2006 Board meeting
12. Boundary descriptions of attendance areas resulting from Board's April 3, 2006 actions
13. Maps of attendance areas
14. April 24, 2006 Board Enrollment Projections
15. Board Balancing Enrollment with Capacity Policy
16. E-mail exchange between Mr. May and Mr. Pfungsten
17. E-mail exchange between Mr. May and Mr. English
18. March 8, 2006 letter from David R. Craig to Thomas Fidler
19. Glossary of acronyms for Harford County secondary schools
20. Balance Enrollment with Capacity Activity Timeline
21. Jay May's May 24, 2006 Affidavit
22. Ruth R. Rich's May 22, 2006 Affidavit
23. Mark W. Wolkow's May 22, 2006 Affidavit
24. STAC membership list
25. Map of attendance areas and location of regional high schools

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The following materials that the Appellant submitted with his appeal were also considered:

1. November 28, 2005 STAC presentation regarding the attendance area for Patterson Mill Middle and High School
2. September 30, 2005 projected enrollments for elementary and secondary schools in Harford County
3. Highlights from the September 12, 2005 Board meeting
4. Proposed elementary feeder patterns
5. December 21, 2005 Fallston Middle School meeting notes
6. January 4, 2006 Joppatowne High School meeting minutes
7. January 11, 2006 Havre De Grace High School meeting minutes
8. A list of 17 redistricting questions with corresponding responses
9. A collection of elementary and secondary enrollment projections from 1998 – 2004
10. 2002 redistricting balancing enrollment table

11. Minutes from the March 25, 2002 Board meeting
12. Table detailing the number of students transitioning from their current schools to proposed schools
13. Appellant's estimate of future enrollment after the Board's final redistricting plan
14. Final enrollment projections
15. April 12, 2006 E-mail from Lynn Sweatt to Larry English with attached April 12, 2006 E-mail from Larry English regarding the redistricting of Fallston High and Middle School
16. Proposed Middle and High School enrollments
17. STAC Final Proposal presented to the Board on February 21, 2006
18. STAC Neighborhood Maps
19. Board's April 3, 2006 final decision
20. Final enrollment projections for secondary schools
21. April 19, 2006 *Baltimore Sun* article
22. E-mail exchanges between Larry English and David Craig
23. Printout of March 17, 2006 letter from David Craig to Ruth R. Rich
24. April 3, 2006 letter from David Craig to Robin Rich
25. April 3, 2006 E-mail from David Craig to Larry English
26. E-mail exchange with Larry English
27. Proposal from Jerry Doody
28. Proposal from Sandy Krause
29. Proposal from Larry English
30. Proposal from Bill Becker
31. Redistricting Plan proposed by Bill Becker
32. Proposal from Rich Pfungsten
33. February 21, 2006 Public Proposal/Recommendation Evaluation Matrix and STAC Response

MATERIAL FACTS THAT ARE NOT IN DISPUTE

Based on the information of record, and the stipulation to these facts by the parties at the July 28, 2006 pre-hearing conference, I find that there is no genuine dispute concerning the following material facts:

1. Since 1998 the number of students attending public middle and high schools in Harford County, particularly those students in the Fallston and greater Bel Air areas, has increased.
2. This continued increase in student population has resulted in several schools operating with
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student enrollments that exceed the state rated capacity.
3. In response to the overcrowding of its schools, the Board has taken action to address the utilization of schools above their capacities.
4. In October 2001 the Board passed policy # .07.01.026 entitled Balancing Enrollment with Capacity ("Board Policy").
5. The Board, through its capital budget, planned the modernization and expansion of the capacity

of North Harford High School ("NHHS"). Construction of the modernization of NHHS started in 2004 and is scheduled to be completed for the beginning of the 2007-2008 school year.

6. To address the overcrowded conditions at Southampton Middle School ("SHMS") and C. Milton Wright High School ("CMWHS") located in the greater Bel Air area, and to also ameliorate other overcrowded schools, the Board adopted a redistricting plan on or about March 25, 2002 (the "2002 Plan").

7. The 2002 Plan recommended taking portions of the 2002-2003 SHMS and CMWHS attendance areas and adding them to the North Harford Middle School ("NHMS") and NHHS attendance areas. The Board decided to hold implementation of this aspect of the 2002 Plan until the renovation/expansion of NHHS was completed.

8. The Board planned construction of a new middle/high school in the greater Bel Air area with a capacity of 1,600 students. This new school will be Patterson Mill Middle/High School ("PMMHS"). Construction of PMMHS began in spring 2005 and as of May 2006 was approximately 50% completed. PMMHS is scheduled to open for students for the 2007-2008 academic year. PMMHS is located approximately in the center of the existing 2005-2006 Bel Air High School ("BAHS") attendance area.

9. In anticipation of the opening of PMMHS, a STAC, in accordance with Board Policy, was appointed. The STAC's purpose was to study and analyze the development of options to balance enrollments with capacities in view of the anticipated opening of PMMHS. STAC was comprised of the following individuals:

- Joseph P. Licata, Assistant Superintendent for Operations; Chairperson
- Jay F. May, Chief of Administration
- David Volrath, Executive Director, Secondary Education
- Patricia L. Skebeck, Executive Director, Elementary Education
- Norman D. Seidel, Director of Transportation
- Douglas Strader, Assistant Supervisor for Research and Evaluation
- Kathleen E. Sanner, Director of Planning and Construction
- Pete Gutwald, Chief, Comprehensive Planning Division, Harford County Planning and Zoning
- Florian Heyder and Fred Hejazi, Citygate GIS

10. The STAC's mission was to develop proposals to create an attendance area for PMMHS and to reduce overcrowding at CMWHS, SHMS, Fallston High School ("FHS")/Fallston Middle School ("FMS") and BAHS/Bel Air Middle School ("BAMS").

11. The STAC convened several times from September 2005 through February 2006. In accordance with Board Policy, the STAC evaluated student enrollment projections, potential redistricting plans,

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phasing plans^{5]} regarding the populating of PMMHS and grandfathering of students affected by redistricting.

12. In developing its proposals, STAC utilized "Autobound", a software program utilized for redistricting students by analyzing the geographical location of currently enrolled students.

13. STAC also employed the succession ratio (also known as the survivor ratio) analysis to project future student enrollments. Succession ratio analysis projects student enrollments based on the historical trend of student populations in a particular school or grade. Succession ratio analysis is recognized by the Maryland State Board of Education as a valid method to project student enrollments.

14. At a November 28, 2005 Board work session the STAC, through its Chairman, Mr. Licata,

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presented its initial proposal regarding the redistricting, phasing and grandfathering proposals designed to populate and to alleviate overcrowding at the middle and high schools. Mr. Licata described

STAC's recommendation which included the following:

- Proposed boundaries of the new attendance area for PMMHS
- Implementation of the 2002 Plan relating to CMWHS and SHMS to be effective in 2007-2008
- Redistricting which would take a portion of the current 2005-2006 attendance area from the Joppatowne High School ("JHS") district and add it to the FHS attendance area
- Take a portion of the NHHS attendance area and add it to the FHS district
- Take a portion of the CMWHS attendance area and add it to the BAHS attendance area
- Take a portion of the Aberdeen High School ("AHS") attendance area and add it to the Havre de Grace High School ("HdeGHS") attendance area
- Take a portion of the JHS attendance area and add it to the Edgewood High School ("EHS") attendance area

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- Take a portion of the FHS attendance area and add it to the BAHS attendance area

Mr. Licata also described the phasing and grandfathering which STAC recommended for the balancing enrollment with capacity initiative.

15. The Board took no action regarding the proposals and options presented at the November 28, 2005 meeting. All of those proposals and options, including the phasing and grandfathering proposals were posted on a Board website dedicated solely to redistricting.

16. Board staff, including members of the STAC, made the following public presentations regarding the STAC's proposals:

- December 21, 2005 at FMS
- January 4, 2006 at JHS
- January 11, 2006 at HdeGHS

During these presentations the Board staff received public input.

17. In February 2006 the STAC met to review its proposals and options and those received from the public regarding the balancing with enrollment initiative. The STAC then made a second presentation to the Board at a work session on February 21, 2006. The proposals presented included modifications regarding the new attendance area for PMMHS (although the new attendance area would still be taken solely from the current 2005-2006 BAHS attendance area) and modifications to proposals related to redrawing boundaries for the JHS/MMS attendance areas. The STAC also made recommendations regarding grandfathering of eleventh and twelfth grade students in 2007-2008 and phasing of students relative to BAHS and PMMHS. These recommendations differed in certain aspects from those provided to the Board during the November 28, 2005 meeting. These proposals were posted on the Board redistricting website.

18. On March 1st and 2nd, 2006, the Board conducted public hearings at CMWHS and the Aberdeen High School ("AHS") in Aberdeen, respectively, and received public input regarding the February 21, 2006 STAC proposals and proposals made by the public.

19. The Board also discussed the balancing enrollment with capacity initiative as a specific agenda item during regular business meetings held on March 6th and 20th 2006.

20. The Board heard public comment regarding the balancing enrollment with capacity initiative at all of its regular business meetings in December 2005, January, February and March 2006. During the

February 21, 2006 work session, the Board discussed and reviewed the public's Matrix regarding the STAC's analysis of proposals made by the public.

21. From November 28, 2005 until April 3, 2006 the Board staff and members received approximately 300 to 400 E-mails or written communications regarding the balancing enrollment with capacity initiative. Each of these E-mails was read by Mr. Licata or Mr. May and each was forwarded to the Board. Board President Ruth Rich and Vice President Mark W. Wolkow personally reviewed each E-mail and proposal forwarded to them by the STAC and the Board considered this information in its deliberations leading to the April 3, 2006 vote. The STAC also received dozens of proposals regarding the redistricting plan.

22. On April 3, 2006, the Board adopted some of the STAC's November 28, 2005 recommendations, some of STAC's February 21, 2006 modifications to those recommendations and, in certain instances, rejected the STAC proposals in part or in whole. The Board's decisions, all of which are to be implemented in the 2007-2008 school year, were as follows:

- An attendance area for PMMHS by taking approximately half of the current 2005-2006 BAHS attendance area and designating this area as the PMMHS attendance area.
- A phasing plan to populate PMMHS with students from the PMMHS district from grades sixth through tenth, with PMMHS populating its eleventh grade class in 2008-2009 and its twelfth grade class in 2009-2010 from its own attendance area.
- Mandatory grandfathering for all eleventh and twelfth grade students in all high schools whose attendance areas were changed beginning in the 2007-2008 academic year with transportation to be provided for those students.
- Implementation of the 2002 Plan relating to CMWHS and SHMS attendance areas effective in 2007-2008.
- Reduction of the geographical size of the attendance area initially recommended by STAC to be taken from the 2005-2006 JHS/Magnolia Middle School ("MMS") attendance area and adding this reduced sized area to the FHS/FMS attendance area.
- Reduction of the geographical size of the attendance area initially recommended by STAC to be taken from the 2005-2006 NHHS attendance area and added this reduced size area to the FHS/FMS attendance area.
- Approval of STAC's recommendation to take a small area from the western portion of the CMWHS/SHMS 2005-2006 attendance areas and add these areas to the BAHS/BAMS attendance area.

- Approval of STAC’s recommendation to take a small area in the northern part of the 2005-2006 AHS/Aberdeen Middle School(“AMS”) attendance area and add this area to the HdeGHS/Havre de Grace Middle School (“HdeGMS”) attendance area.
- Approval of STAC’s recommendation to take a portion of the attendance area in the northern part of the 2005-2006 FHS/FMS attendance area and add this area to the BAHS/BAMS attendance area.
- Approval of STAC’s February 21, 2006 recommendation that a small portion of the attendance area of the JHS/MMS attendance area remain in that attendance area and not be added to the Edgewood High School (“EHS”)/Edgewood Middle School (“EMS”) attendance area.

23. As of the 2008-2009 school year and thereafter, all of the regional public high schools in Harford County are projected to have less students enrolled in them than they had enrolled during the 2005-2006 school year. All of the middle schools’ enrollments will also decrease by the 2008-2009 school year except for NHMS, which will have an enrollment less than its capacity of 1,241 students.

DISCUSSION

MOTION FOR SUMMARY AFFIRMANCE

A Motion of Summary Affirmance is essentially a Motion for Summary Decision. COMAR 13A.01.05.03D states that a Motion for Summary Affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law. Similarly, a Motion for Summary Decision, under COMAR 28.02.01.16D(1) states that a party to an administrative hearing before the OAH “may move for summary decision on any appropriate issue in the case.” An order for summary decision is appropriate under COMAR 28.02.02.16D(2) if “[a] judge finds that there is no genuine issue of material fact; and a party is entitled to prevail as a matter of law.” On a motion for summary decision, which is essentially the same as a motion for summary judgment under Maryland Rule 2-501, I must consider the facts and construe all inferences reasonably drawn from those facts in the light most favorable to the non-moving party (the Appellant). To defeat a motion for summary decision, the Appellant must establish that a genuine dispute exists as to a material fact. A material fact

is one that will somehow affect the outcome of the case. If a dispute exists as to a fact that is not material to the outcome of the case, summary decision is not foreclosed.

The purpose of a summary decision is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. Thus, once the moving party has provided sufficient grounds for summary decision, the nonmoving party must produce sufficient evidence to prove that a genuine dispute to a material fact exists.

The standard of review for the substantive issue in this appeal is set forth in COMAR 13A.01.05.05, which, in pertinent part, provides as follows:

.05 Standard of Review.

- A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.
- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
 - (1) It is contrary to sound educational policy; or
 - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- C. A decision may be illegal if it is one or more of the following:
 - (1) Unconstitutional;
 - (2) Exceeds the statutory authority or jurisdiction of the local board;
 - (3) Misconstrues the law;
 - (4) Results from an unlawful procedure;
 - (5) Is an abuse of discretionary powers; or
 - (6) Is affected by any other error of law.
- D. The appellant shall have the burden of proof by a preponderance of the evidence.

Was the BOE's Decision Arbitrary or Unreasonable?

As noted above, the Board's decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the County Board reached.

Was the BOE's decision contrary to sound educational policy?

The Appellant argued that the movement of students from such a large number of schools simply to populate PMMHS did not make educational sense. At the motions hearing, the Appellant stipulated to the material facts outlined above in this decision. It is uncontroverted that a number of public middle and high schools in Harford County are operating with student enrollments that exceed the state rated capacity levels. In response to this overcrowding situation the BOE passed policy # 07.01.026, the Board Policy, which set out to address the overcrowding of public middle and high schools in Harford County. This ultimately resulted in the construction of PMMHS which will be completed for the 2007-2008 academic year. The BOE's plan results in filling the capacity of PMMHS and in reducing the enrollments of the regional public middle and high schools by the 2008-2009 academic year when compared to the enrollments during the 2005-2006 academic year. I agree with the BOE that real issue is whether the BOE exercised sound educational policy by relieving overcrowding in Harford County Public Schools by assigning students to PMMHS and through the redistricting of students in the greater Bel Air region. The BOE's policy on school boundaries implicitly recognizes that students can receive a better education in a less crowded school environment. The BOE's boundary changes for various middle and high schools in Harford County to reduce overcrowding in those schools by the 2008-2009 academic year is consistent with that educational reality.

Could a reasoning mind reach the same decision as the BOE?

The peculiar phrasing of this regulation simply confirms that the BOE has broad discretion in changing the boundaries of the public schools in Harford County. The BOE, "with the advice of the county superintendent . . . shall determine the geographical attendance area for each school under this section." Md. Code. Ann., Educ. § 4-109(c) (2004); *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967).

The BOE, faced with overcrowding of the county middle and high schools followed its own policy for implementing boundary changes. The record indicates that the BOE established a STAC to develop proposals to create an attendance area for PMMHS and to reduce overcrowding at CMWHS, SHMS, FHS, FMS, BAHS and BAMS. The STAC evaluated student enrollment projections, potential redistricting plans, phasing plans for the populating of PMMHS and the grandfathering of students affected by redistricting. The STAC utilized a software program specifically designed for redistricting

students and also employed the succession ratio analysis to project future student enrollments. BOE and STAC members made public presentations regarding the STAC proposals on December 21, 2005, January 4, 2006 and January 11, 2006. In February 2006, the STAC convened to review its proposals and options and those received from the public regarding the Board Policy. The STAC then made a second presentation to the BOE at a work session on February 21, 2006. The proposal presented by STAC at the February 21, 2006 meeting with the Board was posted on the Board's redistricting website. On March 1 and 2, 2006 the Board conducted public hearings and received public input regarding the February 21, 2006 STAC proposals and proposals made by the public.

The Board considered public comment and proposals at all of its regular business meetings in December 2005 and in January, February and March of 2006. Additionally, during the February 21, 2006 work session the Board discussed and reviewed the public's Matrix regarding the STAC's analysis of public proposals. Eventually, the BOE made its final redistricting determination to populate PMMHS and reduce overcrowding at other secondary schools by adopting some of STAC's recommendations. The Board also considered approximately 300-400 E-mails and written communications from the public regarding the Board Policy. The BOE president and vice president personally reviewed each E-mail and proposal forwarded to them by the STAC and this information was considered during its deliberations that resulted in the final April 3, 2006 redistricting plan. The BOE obviously did not make this decision summarily; it studied the overall student population and overcrowding of the county's schools. When the community protested the proposed boundary changes, the BOE listened and considered input from the public. The BOE held numerous public forums in 2005 and 2006 to get the public's input. The Board presented a very reasonable explanation for its decision on the redistricting plan. (See *Stishan v. Howard County Board of Education*, MSBE Opinion No. 05-33, 09/27/05, and *Coleman v. Howard County Board of Education*, MSBE Opinion No. 05-32, 09/27/05.) Although the Appellant's disappointment with the Board's decision is palpable, there is no evidence to suggest that the Board did not take all of the factors outlined by the Appellant into consideration. It is a well established legal principle that, "...absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school." *Bernstein*, 245 Md. at 472. Moreover, the public process provided substantial input from the community,

and the Board considered and thoroughly discussed all of the issues raised by the Appellant. The Board considered all alternatives submitted and ultimately determined populating PMMHS and balancing the enrollment in other Harford County secondary schools required the changing of certain attendance boundaries and the movement of students from one school to another was a reasonable exercise of its discretion and it was the best solution. There was nothing arbitrary or unreasonable in the Board's decision. For those reasons, I find the Appellant has not met his burden to show that a reasoning mind could not have reasonably reached the conclusion the Board reached. COMAR 13A.01.05.05B(2). In summary, the BOE followed its procedures, considered information from various sources, and reached a reasonable, rational decision concerning the use of the county's educational resources. A reasoning mind could have reached the same decision as the BOE.

Was the BOE's Decision Illegal?

The Appellant did not identify anything that the BOE did in reaching its decision that was unconstitutional, exceeded its authority, misconstrued the law, abused its discretionary powers; or was affected by any other error of law. In his appeal, the Appellant alleged that the BOE abused its discretionary powers by failing to timely share data produced by STAC with the public. The Appellant also argued that the STAC discredited public input before sharing it with the Board and to share multiple redistricting options with the Board. I disagree. I find that the undisputed material facts in this matter indicated that the STAC made three public presentations and numerous presentations to the Board as well. Furthermore, the STAC provided extensive information regarding its redistricting proposals on the Board's redistricting website. Accordingly, I find that the Appellant has failed to show a material fact in dispute that demonstrated that the Board abused its discretionary powers.

The Appellant also argued that the Board failed to consider the impact of the Base Realignment Commission ("BRAC") decision which will potentially increase the population in Harford County as certain army operational functions are moved to Aberdeen Proving Grounds. The Appellant also argued during the motions hearing that the redistricting plan should at least be delayed in order to assess the impact of BRAC. However, BRAC was discussed during the January 11, 2006 public meeting at Aberdeen High School. The chairperson of the STAC, Joseph P. Licata, stated that the potential influx

of students resulting from BRAC is still unknown. Therefore, I find that the impact of BRAC is not a material fact affecting the balancing of enrollments in Harford County as its impact remains unknown at this time. As PMMHS had to be populated by its opening in 2007-2008 and the overcrowding of other schools needed to be addressed, it was reasonable for the BOE to go forward with its redistricting plan before the impact of BRAC was known.

The Appellant also argued that the Harford County ordinance known as the Adequate Public Facilities Ordinance ("APFO") which requires a moratorium on residential building in a school attendance area if any school within that area is at or above 105% capacity was not adequately considered by the Board. The Appellant, however, presented no legal authority to support its notion that the Board must base its redistricting decisions on the county's growth management policies or regulations. Growth issues are a factor in the Board Policy, it is not, however, controlling with respect to balancing enrollment in Harford County.

The Appellant further argued that the creation of a concentric circle footprint for the PMMHS attendance area may not be the best option. This may be the Appellant's opinion, but the Board has broad discretionary authority to create new attendance areas in order to balance enrollment.

The Appellant further argued that the elementary school feeder patterns were to be considered a defined goal of the Board Policy, yet seven elementary feeder patterns were split. The Board Policy provides that continuity of the feeder school system is to be considered as one criterion in evaluating a balancing enrollment with capacity initiative. However, changing the elementary feeder system does not render such action to be illegal. In accordance with *Mussman et al. v. Montgomery County Board of Education*, MSBE Opinion 07-981 (1998) all components of a Board redistricting policy will not necessarily be met. Further, *Mussman* held that policy statements are a guideline for development of recommendations. *Mussman* also held that failure to meet every objective one might desire does not make the decision arbitrary, unreasonable or illegal.

The Appellant also argued that the goal of 90-95% enrollment in each of the affected schools was not achieved. Again, in accordance with *Mussman*, the goals are but a guideline. The mission of the Board Policy was to populate PMMHS and relieve overcrowding in other Harford County secondary schools. The failure to achieve a 90-95% enrollment rate in each of the schools affected by the

redistricting plan does not demonstrate an illegal act by the Board.

The Appellant further argued that the Board illegally ignored the STAC recommendations in making its final determination. I disagree. It is uncontroverted that the Board adopted some of STAC's recommendations while also rejecting some of its recommendations in formulating its final April 3, 2006 decision. Regardless, the Board was free to accept, deny or modify the STAC's recommendation in accordance with the Board Policy and *Coleman*.

Another argument presented by the Appellant was that a dedicated source of construction funding for additional capacity for BAHS, EHS and AHS did not exist. However, the Harford County Executive, in a letter dated March 8, 2006, stated that he has included money in the Harford County capital budget for fiscal year 2007 for the construction of both a new BAHS and EHS building. (Bd. Ex. #18). Even if the above projects did not proceed, the April 3, 2006 redistricting decision still results in fewer students projected to attend the regional high and middle schools, excepting NHMS, by 2008-2009 than do so now. (Bd. Ex. #14) Again, the Appellant has failed to show that the Board's action in going forward without a dedicated stream of funding for construction of BAHS and EHS is unreasonable or illegal.

The Appellant further asserted that the condition of BAHS and BAMS during the 2007-2008 academic year is questionable because BAMS is scheduled to receive HVAC work during that year requiring a large number of relocatable classrooms. Further, construction of a new BAHS building adjacent to the current building is scheduled to begin in 2007. However, even if the conditions at BAMS and BAHS were qualitatively different because of the use of relocatable classrooms or the presence of construction, the MSBE has held that redistricting of students which requires them to attend schools with different environments is not arbitrary, unreasonable or illegal. (See *Howell v. Prince George's County Board of Education*, MSBE Opinion 05-07 (2005)).

In summary, the Appellant has not generated a genuine dispute of any material fact that would suggest that the BOE's decision was illegal.

The Appellant has failed to establish a disputed fact that is material to determining whether the Board's April 3, 2006 redistricting decision was arbitrary, unreasonable or illegal.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the BOE's Motion for Summary Affirmance must be granted because there is no genuine dispute as to any material fact and the BOE is entitled to prevail as a matter of law. COMAR 28.02.02.16D(2); COMAR 13A.01.01.03E.

PROPOSED ORDER

I **PROPOSE** that the Motion for Summary Affirmance filed by the Harford County Board of Education be **GRANTED** by the Maryland State Department of Education, Maryland State Board of Education, and that the contested-case hearing scheduled for September 13, 14, 20, and 21, 2006 be **CANCELLED**; and I further,

PROPOSE that the decision of the Harford County Board of Education, dated April 3, 2006, be **UPHELD** by the Maryland State Department of Education, Maryland State Board of Education.

August 24, 2006
Date

Brian Zlotnick
Administrative Law Judge

BZ/
#83240

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen (15) days of receipt of the decision; parties may file written responses to the objections within fifteen (15) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed to:

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LARRY T. ENGLISH, et. al.	*	BEFORE BRIAN ZLOTNICK,
APPELLANT	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
HARFORD COUNTY	*	OF ADMINISTRATIVE HEARINGS
BOARD OF EDUCATION	*	CASE NO.: MSDE-BE-09-06-26214
* * * * *		

FILE EXHIBIT LIST

The following 25 exhibits that the BOE submitted with its Motion for Summary Affirmance and presented at the Motions hearing were considered:

1. Relevant minutes from the March 25, 2002 Board meeting
2. Minutes of the November 28, 2005 Board meeting
3. Minutes of December 21, 2005 Superintendent’s Technical Advisory Committee (“STAC”) presentation meeting
4. Minutes of January 4, 2006 STAC presentation meeting
5. Minutes of January 11, 2006 STAC presentation meeting
6. Minutes of February 21, 2006 Board meeting and work session
7. Minutes of March 1, 2006 Board meeting
8. Minutes of March 2, 2006 Board meeting
9. Minutes of March 6, 2006 Board meeting
10. Minutes of March 20, 2006 Board meeting
11. Minutes of April 3, 2006 Board meeting
12. Boundary descriptions of attendance areas resulting from Board’s April 3, 2006 actions
13. Maps of attendance areas
14. April 24, 2006 Board Enrollment Projections
15. Board Balancing Enrollment with Capacity Policy
16. E-mail exchange between Mr. May and Mr. Pffingsten
17. E-mail exchange between Mr. May and Mr. English
18. March 8, 2006 letter from David R. Craig to Thomas Fidler
19. Glossary of acronyms for Harford County secondary schools
20. Balance Enrollment with Capacity Activity Timeline
21. Jay May’s May 24, 2006 Affidavit
22. Ruth R. Rich’s May 22, 2006 Affidavit
23. Mark W. Wolkow’s May 22, 2006 Affidavit
24. STAC membership list
25. Map of attendance areas and location of regional high schools

[8]

The following materials that the Appellant submitted with his appeal were also considered:

1. November 28, 2005 STAC presentation regarding the attendance area for Patterson Mill Middle and High School
2. September 30, 2005 projected enrollments for elementary and secondary schools in Harford

County

3. Highlights from the September 12, 2005 Board meeting
4. Proposed elementary feeder patterns
5. December 21, 2005 Fallston Middle School meeting notes
6. January 4, 2006 Joppatowne High School meeting minutes
7. January 11, 2006 Havre De Grace High School meeting minutes
8. A list of 17 redistricting questions with corresponding responses
9. A collection of elementary and secondary enrollment projections from 1998 – 2004
10. 2002 redistricting balancing enrollment table
11. Minutes from the March 25, 2002 Board meeting
12. Table detailing the number of students transitioning from their current schools to proposed schools
13. Appellant's estimate of future enrollment after the Board's final redistricting plan
14. Final enrollment projections
15. April 12, 2006 E-mail from Lynn Sweatt to Larry English with attached April 12, 2006 E-mail from Larry English regarding the redistricting of Fallston High and Middle School
16. Proposed Middle and High School enrollments
17. STAC Final Proposal presented to the Board on February 21, 2006
18. STAC Neighborhood Maps
19. Board's April 3, 2006 final decision
20. Final enrollment projections for secondary schools
21. April 19, 2006 *Baltimore Sun* article
22. E-mail exchanges between Larry English and David Craig
23. Printout of March 17, 2006 letter from David Craig to Ruth R. Rich
24. April 3, 2006 letter from David Craig to Robin Rich
25. April 3, 2006 E-mail from David Craig to Larry English
26. E-mail exchange with Larry English
27. Proposal from Jerry Doody
28. Proposal from Sandy Krause
29. Proposal from Larry English
30. Proposal from Bill Becker
31. Redistricting Plan proposed by Bill Becker
32. Proposal from Rich Pflingsten
33. February 21, 2006 Public Proposal/Recommendation Evaluation Matrix and STAC Response

[1]

There is no substantive difference between a summary affirmance and a summary decision.

[2]

The Appellant's exhibits were numbered A-1 to A-8; B-1 to B-12; C-1 to C-5; D-1 and E-1 to E-6. For consistency purposes I will list these exhibits numerically. For example, A-1 will be #1 and B-1 will be listed as #9.

[3]

State rated capacity refers to the number of students which the MSDE determined as the enrollment capacity of a given school.

[4]

Phasing, for the purposes of this Proposed Order, means the determination as to the number of grades (e.g. ninth grade, tenth grade) that a school enrolls for any given year.

[5]

Grandfathering, for the purposes of this Proposed Order, means allowing a student to remain in a particular school which he attended previously because he resided in the school's attendance area, but who would not otherwise be allowed to attend the same school due to a change in the school's attendance area.

[6]

The parties did not stipulate to whether one or multiple proposals were presented at the November 28, 2005 meeting.

[7]

These proposed changes (and the final April 3, 2006 changes) to attendance areas for the high schools in question would result in an identical change in the attendance area for the high school's feeder middle school. In 2005-2006, the attendance area for each regional high school is the same for the middle school located in that attendance area. The Board's actions of April 3, 2006 will not disturb this circumstance.

[8]

The Appellant's exhibits were numbered A-1 to A-8; B-1 to B-12; C-1 to C-5; D-1 and E-1 to E-6. For consistency purposes I will list these exhibits numerically. For example, A-1 will be #1 and A-2 will be listed as #2.